

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.123-2

C.R. No.4873 of 2018

Date of decision: 01.08.2018

Bindu Chowdhary

....Petitioner

versus

Raghubir Chand and another

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Sanjay Joshi, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral)

Through the present petition challenge is made to the order dated 25.07.2018 passed by the Additional Civil Judge (Senior Division), Chandigarh (for short – 'the Trial Court') through which an application filed by the petitioner seeking to place on record additional evidence has been dismissed.

The facts in brief which have been culled out from the record and after hearing learned counsel for the petitioner are that way back in September 2010, the respondents filed a suit seeking therein specific performance of an agreement to sell dated 17.04.2003 pertaining to House no. 57, Sector 9, Chandigarh (for short – the suit property). Possession of the suit property was also sought.

Upon notice, the petitioner, who was arrayed as a defendant in the suit, appeared and filed her written statement denying the claim set up by the respondents/plaintiffs *inter alia* submitting that no agreement to sell

had been entered into between the parties and that they had only entered into a loan agreement for ₹ 70 lakhs which already stood returned by the petitioner through demand drafts.

After both the parties had led their respective evidence and the matter was posted by the Trial Court for final arguments, the petitioner filed an application to place on record additional evidence in the form of certified copies of record pertaining to release of the original title deed of the suit property by State Bank of India (formerly State Bank of Patiala) (for short – 'the Bank') as Ex.DA/2 and notarized copies of 'No Dues Certificate' and fee receipt given by the Bank as Mark DX/2 and DX/3. The Trial Court dismissed the application through the order which is the subject matter of challenge in the present proceedings.

Learned counsel for the petitioner submits that the Trial Court erred in not permitting the petitioner to place on record the aforesaid documents as additional evidence as these documents were per se admissible and certified under the Bankers' Books Evidence Act, 1891. It was further submitted that the documents sought to be placed on the record were relevant for the fair and just decision of the suit as these documents would belie the averments made by the respondents in their plaint which were to the effect that at the time of the alleged agreement to sell dated 17.04.2003, the petitioner had handed over to the respondents a non-encumbrance certificate certifying therein that the suit property had not been encumbered for the last 10 years. According to the learned counsel for the petitioner, the aforesaid documents would further show the falsity in the case set up by the respondents that at the time of the alleged agreement to sell, original title deed of the suit property had not been handed over to them

by the petitioner.

The afore-submissions of the learned counsel for the petitioner have been considered but the same do not warrant a favourable response.

The documents which the petitioner seeks to produce by way of additional evidence are detailed and described as under:-

Document No.1

Noting dated 02.04.2003 from the record of the Bank as per which the original title deed of the suit property, which had earlier been equitably mortgaged with the Bank had been returned by the Bank to the petitioner on 02.04.2003.

Document No.2

'No Dues Certificate' dated 14.09.2007 issued by the Bank certifying that the loan which had been sanctioned to M/s Jandwani Poly Products Private Limited, SCO No.2905-06, Sector-22C, Chandigarh (for short – 'the Company') had been adjusted under the One Time Settlement Scheme. This document further certifies that the aforesaid loan was collaterally secured by the title deed of the suit property in the name of the petitioner and that after the adjustment of the loan, the property was released by the Bank on 02.04.2003.

Document No.3

Receipt of ₹ 150/- given by the Bank on 14/15.09.2007 for issuance of the afore-referred 'No Dues Certificate' dated 14.09.2007 (Document No.2).

It is admitted that the first document dated 02.04.2003 as also the second and third documents, both dated 14.09.2007, were in the knowledge and possession of the petitioner from the respective dates when they were issued. Meaning thereby, that they were in her possession and knowledge even before she filed her written statement in the year 2011.

That being so, these documents cannot be allowed to be produced as additional evidence after both parties have led their evidence and thus exposed their respective claims and the matter is posted for final arguments, especially in the absence of any worthwhile explanation for not having them produced them earlier. These documents are apparently being sought to be produced by the petitioner with an attempt to fill up lacunae in her case. The same cannot be permitted.

The aforesaid documents are even otherwise not found to be relevant for the just and proper decision of the matter. According to the learned counsel for the petitioner, the first document dated 02.04.2003 is sought to be produced as additional evidence to belie the case set up by the respondents that the original title deed of the suit property had not been handed over to them by the petitioner at the time they entered into the agreement in question. This document only shows that on 02.04.2003 the original title deed of the suit property was returned by the Bank to the petitioner. The fact that on 02.04.2003 the original title deed was in the possession of the petitioner, would, in no manner belie the case set up by the respondents that on the date of the alleged agreement i.e. 17.04.2003, the original title deed had not been handed over by the petitioner to the respondents as there is nothing in the document to show that the title deed of the suit property was actually handed over by the petitioner to the respondents on 17.04.2003.

So far as the second document is concerned, the same is a 'No Dues Certificate' dated 14.09.2007 issued by the Bank certifying therein that the loan which had been taken by the Company had been adjusted. It further certifies that the loan was collaterally secured by the title deed of the

suit property, which title deed has already been released by the Bank on 02.04.2003. According to the learned counsel for the petitioner, this document is sought to be produced by the petitioner to belie the case set up by the respondents that at the time of the alleged agreement to sell dated 17.04.2003, the petitioner had handed over to the respondents a non-encumbrance certificate certifying therein that the suit property had not been encumbered for the last 10 years. Like the first document, this document also does not contain anything to show whether such document was or not handed over by the petitioner to the respondents and therefore, would throw no light on the disputes raised by the parties.

The third document is merely a receipt of payment of fee paid to the Bank by the petitioner to procure the afore-referred second document dated 14.09.2017. According to me, in view of the above observations, this receipt is not germane to the decision of the suit.

In view of the above, I have no hesitation to conclude that there is no merit in the present petition as the petitioner was in knowledge of the documents, which she now seeks to produce as additional evidence, even before the filing of the suit. Nothing precluded her to confront the respondents' witnesses with these documents at the time the respondents were leading their evidence or to produce and prove them while leading her evidence which she admittedly closed after 08 years of the filing of the suit. The only reason given for the delay in introducing the above documents is that the petitioner is an old widow lady, aged 78 years. Such explanation is not worthy of acceptance for the simple reason that the petitioner, at the same age, has admittedly actively been pursuing the present litigation through filing of several applications/petitions before the Trial Court as also

before this Court. In the several rounds of litigation filed before the Trial Court which have also travelled to this Court, it has been found that various pleas/ defences have been taken by the petitioner which shows that she is pursuing the present litigation with vigour. Further, the present matter is being pursued through the petitioner's General Power of Attorney holder Shri Siddharth Joshi who is said to be aged 26 years, who certainly cannot be classified as an old person.

Dismissed.

(DEEPAK SIBAL)
JUDGE

August 01, 2018

Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No